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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-200399

DATE: September 28, 1981

MATTER OF: Klein-Sieb Advertising and Public Relations,
Inc.

DIGEST:

1. Procuring agency generally must give offerors sufficient details in request for proposals to enable them to compete intelligently and on relatively equal basis; specifications must be unambiguous and describe agency's minimum needs accurately. However, when precise estimates of work to be performed cannot be made, solicitation is sufficient if it places offerors on notice and permits them to use business judgment in setting prices to cover risk of being asked to provide greater amount or different type of services than indicated.
2. There is no legal requirement that competition be based on plans and specifications which state work in detail so as to completely eliminate possibility that contractor will be required to perform work other than that specified in solicitation. Mere presence of risk does not make solicitation improper.
3. When seven offerors submit proposals in response to allegedly vague solicitation, and two offerors state that they had no difficulty in preparing fixed price proposals, GAO cannot conclude that specifications inhibited competition or prevented offerors from preparing proposals properly.
4. Allegation that unrealistically low offer is due to failure to understand what may be required under contract involves offeror's responsibility, and if agency makes affirmative determination, GAO will not generally review it.

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5. While agency could have used unit pricing, cost-type contract, or basic ordering agreement to procure advertising services, GAO has no legal objection to award of firm fixed-price contract, since agency is free to select type which it believes will promote best interest of Government.

Klein-Sieb Advertising and Public Relations, Inc. protests the proposed award of a contract for advertising services in support of Air Force Reserve recruiting under request for proposals F09650-80-R-0133, issued by Warner Robins Air Logistics Center, Georgia. The firm alleges that the solicitation is so vague as to the amount and type of advertising which will be ordered that offerors cannot prepare their proposals intelligently.

Because the Air Force intends to make award to the lowest priced, technically qualified offeror, Klein-Sieb suggests that it resolicit and seek unit prices for particular types of advertising, rather than a single, firm fixed price for the services in question. We are denying the protest.

Background--The Protested Solicitation:

The Air Force seeks a wide variety of advertising services, from consultation and planning to actual creation and placement of advertisements in newspapers and magazines, on radio and television, and for billboards and direct mail. The Air Force will initiate specific projects by issuing delivery orders as advertising is required.

The Air Force's total annual budget for this program is \$1,350,000; of this, an estimated 47 percent will go for direct media, 22 percent for electronic media, 18 percent for outdoor advertising, and 13 percent for other advertising and supplies. The solicitation states that the advertising program will not be static, but will be subject to constant changes reflecting manpower and skill requirements, unit weapon system conversion, and other factors.

A firm fixed price must be offered for all advertising services; however, the Air Force will reimburse the contractor for the direct costs of newspaper space, radio and television time, billboard rental, and the like. The Air Force also will pay travel and per diem and will provide various related services such as film production and printing

from the contractor's "camera ready" copy. Option prices for one year are being evaluated and, under the Air Force's Five Year Policy, negotiations will be conducted only with the successful contractor for an additional three years, assuming satisfactory performance and continued need for the services.

Klein-Sieb's Protest:

Klein-Sieb, the incumbent, asserts that firms which have not performed this contract in the past will be unaware of the great differences in the amount and type of advertising services which the Air Force has ordered previously and implies that, as a result, their offers will be unrealistically low. During negotiations, Klein-Sieb provided the Air Force with figures based on its own past contracts, and now argues that the agency had a duty to disclose this information to all offerors. Without such disclosure, Klein-Sieb indicates, it was prejudiced by offering what it believes, on the basis of past experience, is a reasonable price for the services it may be expected to provide.

For example, the solicitation calls for creation of between 30 and 50 billboards a quarter. Klein-Sieb asserts that this difference could amount to \$50,000, since each billboard costs several thousand dollars. Klein-Sieb argues that offerors must calculate their prices on the basis of 50 billboards or risk having to provide billboards for which they will not be paid. In addition, the protester states, this situation improperly will cause the Air Force to contract and pay for the maximum--50 billboards--although it may order only 30.

Other variations which Klein-Sieb points out include the fact that 57 revisions were made to the master ad book, in 1979 while in 1980 only 19 were required. Also during 1980, advertising was prepared and placed in one magazine for \$19,000, in a newsletter for \$4,000, and in a medical journal for \$1,800. The protested solicitation does not include an estimated number of revisions for the master ad book and does not indicate in what publications the Air Force expects to advertise.

Klein-Sieb also points out that the percentages of the Air Force budget allocated to particular types of advertising have varied greatly in the past. For instance, in 1978, 32 percent of available funds went for direct advertising, while in 1979, 45 percent was spent on this category. The problem

is compounded, Klein-Sieb asserts, because the solicitation states that the contractor may not obtain an equitable adjustment for any differences between estimated and actual services ordered.

Klein-Sieb concludes that the solicitation does not reflect the best information available to the Government, inhibits the full and free competition required by the procurement statutes, and violates Defense Acquisition Regulation (DAR) § 3-501 (1976 ed.), which requires that solicitations contain the information necessary to enable prospective offerors to prepare their proposals properly.

Klein-Sieb believes that the Air Force could retain the flexibility which it appears to desire in advertising services at the lowest cost if it sought and made award on the basis of unit prices for preparation and placement of particular types of advertising. Klein-Sieb further suggests that the contractor could still be reimbursed for the direct cost of placing ads and that prices for special projects could be negotiated after award.

The Air Force responds that solicitations for advertising services are difficult to prepare, since programs constantly are being changed or updated to meet current needs. The protested solicitation, the Air Force argues, included sufficient information to allow seven firms, including Klein-Sieb, to submit acceptable proposals on a firm fixed-price basis. The standard of review for our Office, the Air Force concludes, is not whether the estimate of work to be done under the contract is totally accurate, but whether it was based on the best information available.

GAO Analysis:

As a general rule, a procuring agency must give offerors sufficient detail in a request for proposals to enable them to compete intelligently and on a relatively equal basis. Telephonics Corporation, B-194110, January 9, 1980, 80-1 CPD 25. Specifications must be free from ambiguity, M. J. Rudolph Corporation, B-196159, January 31, 1980, 80-1 CPD 84, and must describe the minimum needs of the procuring activity accurately. Gibson & Cushman Dredging Corporation, B-194902, February 12, 1980, 80-1 CPD 122.

In certain instances, however, it may not be possible for an agency to predict its needs with total accuracy. For example, in Gibson & Cushman Dredging Corporation, supra, the Corps of Engineers was able to describe the services which it desired--clearing a navigation channel in the Connecticut River, to limit those services to a 50-mile section of the river, and to specify that the services must be performed during a two-month period. However, the Corps could not identify precise dredging and disposal spots until after performance was to begin, when the contracting officer would place orders for dredging. We found that estimates as to the number of cubic yards to be dredged were based on the best information available and that all potential contractors were on notice that the contract would require whatever amount of dredging it took to clear the channel. Due to these unusual circumstances, we denied the portion of the protest relating to lack of a specific statement of work.

Similarly, in this case the Air Force has indicated the type of advertising services which it will require and the percentages of its budget which it expects to allocate to each. These, the Air Force states, reflect its best assessment of future needs. We believe this information was sufficient to place offerors on notice that they would have to provide the services listed on an "as required" basis and to permit them to use their business judgment in setting prices to cover the risk of being asked to perform greater amounts or different types of services than indicated.

While it may have been helpful to offerors if the Air Force had included information in the solicitation on the amount and type of advertising services previously ordered, we agree with the agency that historical needs are not the only factor which may determine future needs. Moreover, there is no legal requirement that competition be based on plans and specifications which state the work in detail so as to completely eliminate the possibility that the successful contractor will encounter conditions or be required to perform work other than that specified. We have stated that such perfection, while desirable, is manifestly impracticable in some procurements, 41 Comp. Gen. 484 at 488 (1962), and that the mere presence of a risk factor does not make a solicitation improper. Applied Devices Corporation, B-199371, February 4, 1981, 81-1 CPD 65.

We note that of the seven proposals submitted, the fixed prices offered ranged from \$101,000 to \$182,000, or from 7 to 12 percent of the Air Force's \$1,350,000 advertising budget. We cannot conclude from these figures that the range of prices is so great that it indicates overly vague specifications, rather than normal differences in pricing. In addition, of the seven firms which submitted proposals, two have commented on the Klein-Sieb protest, indicating to our Office that they found the statement of work adequate for preparation of proposals on a firm fixed-price basis.

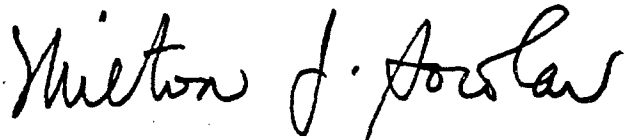
In view of all these facts and circumstances, we conclude that the solicitation was based on the best information available to the Air Force, and that it neither inhibited competition nor prevented offerors from preparing their proposals properly.

Klein-Sieb's implied allegation that any offeror who submitted an unrealistically low price did not understand what would be required under the contract concerns the offeror's ability to perform the work in question, and thus is a matter of responsibility. Before awarding a contract to any firm, the Air Force must find that it is a responsible concern. DAR § 1-902. Our Office does not review affirmative determinations of responsibility except in circumstances not present here. See Klein-Sieb Advertising and Public Relations, Inc., B-194533.2, March 23, 1981, 81-1, CPD 214, also involving Air Force procurement of advertising services.

Finally, it appears that preparation of exact estimates is a particular problem in contracting for advertising services. In private industry, the Air Force states, this problem is overcome by awarding contracts on a cost-plus-percentage-of-cost basis; however, this system of contracting is prohibited by 10 U.S.C. § 2306(a) (1976). In Government contracts, other approaches have been taken. See, for example, Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325, in which we approved the Navy's evaluation of cost proposals for an indefinite quantity, cost-plus-fixed-fee contract on the basis of a hypothetical advertising plan.

While the Air Force could have elected to make award on the basis of unit prices, as suggested by Klein-Sieb, or to use a basic ordering agreement pursuant to DAR § 4-803.6, the agency was nevertheless free to select the type of contract which it believed would promote the best interest of the Government, see Grey Advertising, Inc., supra, at 1138, particularly when, as here, the fee for services actually to be provided by the contractor would amount to a very small portion, i.e., between 7 and 12 percent, of its total advertising budget. We therefore have no legal objection to award of a firm fixed-price contract for advertising services. See generally National Veterans Law Center, B-198738, February 2, 1981, 81-1 CPD 58 at 5, 6.

Protest denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States